

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

884TH COMMISSION MEETING

OPEN MEETING

Commission Meeting Room  
Federal Energy Regulatory  
Commission  
888 First Street, N.E.  
Washington, D.C.

Tuesday, March 22, 2005

10:00 a.m.

1 APPEARANCES:

2 COMMISSIONERS PRESENT:

3 CHAIRMAN PAT WOOD, III, Presiding

4 COMMISSIONER NORA MEAD BROWNELL

5 COMMISSIONER JOSEPH T. KELLIHER

6 COMMISSIONER SUEDEEN G. KELLY

7 SECRETARY MAGALIE R. SALAS

8

9

10

11

12

13 ALSO PRESENT:

14 Pamela S. Jenkins, Reporter

15

16

17

18

19

20

21

22

23

24

25

P R O C E E D I N G S

(10:00 a.m.)

CHAIRMAN WOOD: Please turn for our pledge our  
Flag.

(Pledge to flag recited.)

CHAIRMAN WOOD: Two and a half years ago,  
(inaudible) I had the pleasure if reporting to a gentleman  
who (inaudible) a gentleman named Robert Gramlich. And  
Robert walked in --

(Laughter)

CHAIRMAN WOOD: Not only has Rob been a  
phenomenal analyst for me on economic issues, and I think,  
not only me, but my colleagues and Staff, and to our  
(inaudible). It has been fun to watch grow as a  
professional. (Inaudible) For all of you have, one of the  
delights of these types of jobs is getting to working  
around him. I can't imagine a better hire that I could  
have made than Rob. As he is now leaving the public  
sector to go to the for-profit sector and serve as Policy  
Director for the American Energy Association, this is a  
very exciting opportunity for that particular segment of  
the energy industry. I wanted to just thank Rob, and  
present him with an exemplary public service plaque. And  
with a tear and a congratulations, thank you for the local  
things that you have done.

1 (Applause.)

2 CHAIRMAN WOOD: I want to also acknowledge  
3 Rob's mom, Ms. Gramlich, and his wife, Terry, here today.  
4 They're expecting a new little offspring in the next  
5 couple months. So, we wish you all well in those  
6 transitions. There you are.

7 MRS. GRAMLICH: I'm in the back.

8 CHAIRMAN WOOD: Thank you all for being here  
9 today. You've given me your husband and your son for  
10 these last three and a half years.

11 I want to say that in response to some of the  
12 great feedback from members of the regulative community,  
13 immediately following the completion of the Commission  
14 meeting, as is customary, I and another Commissioner will  
15 hold press briefings in Hearing Room 2, next door.

16 Starting today, members of the public may  
17 listen to and view this briefing in the Commission Meeting  
18 overflow room. The briefing will not be telecast through  
19 the Capitol Connection Service.

20 On May the 13th, actually, first, on April the  
21 22nd here at FERC, we will be having a transmission  
22 incentive conference. My colleagues and I have discussed  
23 this in conjunction with our deliberations on the  
24 transmission pricing and policy phases. And we want to --  
25 before we move forward on that document, we want to, in a

1 public way, in a conference format to examine the  
2 impediments to investment in the electric transmission  
3 infrastructure, and to form potential solutions; including  
4 formation of new business models, as well as appropriate  
5 ratemaking policies that would encourage investment in  
6 transmission.

7 Among the issues that the panelists on the  
8 April 22nd conference will be called to address are seven  
9 questions:

10 (1) Is the transmission grid being expanded  
11 and improved in ways that support regional reliability and  
12 market needs?

13 (2) What are the barriers needed to provide  
14 for transmission investment?

15 (3) Has the risk profile of transmission  
16 investments changed and if so, what are the implications  
17 for the Commission policies?

18 (4) What ratemaking policies will encourage  
19 investment in electric transmission infrastructure?

20 (5) Who should, and is most likely to make  
21 these investments?

22 (6) Should the formation of transmission-only  
23 companies be encouraged, and if so, how?

24 (7) What new technologies are available to  
25 enhance transmission reliability and efficiency?

1                   Again, that all-day conference will be here, I  
2 believe, with all four us, on the 22nd April.

3                   The following month, on May 13th, as previously  
4 announced will be in Charleston, West Virginia. We will  
5 focus on coal and the transmission regulatory issues  
6 related to the development of coal. As you know,  
7 certainly, EPA is set to provide some regulatory  
8 (inaudible) for the Commissioners for future and current  
9 coal-fired plants, which are an important part of the  
10 nation's power portfolio. And so we wanted to, in a  
11 timely manner, explore the development of new coal-fired  
12 power plant and assess that. Our Agency may expand the  
13 high voltage transmission network to accommodate these new  
14 resources.

15                  The purpose of this Conference is to explore  
16 the power grid infrastructure issues related to  
17 incremental production of electric energy from coal. This  
18 again, is our Nation's most abundant resource. And we're  
19 having problems again in the Gulf. Coal is development is  
20 a resource in our country.

21                  COMMISSIONER BROWNELL: And we all know Dan  
22 (inaudible) and Mark Robinson will giving a tour of their  
23 high school.

24                  CHAIRMAN WOOD: Boy, I tell you when they head  
25 North, all those fellows find the dirt pretty fast.

1                   COMMISSIONER BROWNELL:  You've got it.

2                   CHAIRMAN WOOD:  The agenda will include an  
3                   update on clean coal technology.  However, most of the  
4                   conference will focus on steps this Commission can take to  
5                   expand the high voltage transmission network to  
6                   accommodate delivery of increased amounts of coal-fired  
7                   electricity from the coal fields to the major load  
8                   centers.

9                   We expect to hear from state and federal  
10                  representatives, regional transmission organizations, and  
11                  coal producers.

12                 The Conference will examine both Eastern and  
13                 Western coal issues.  And since solutions to expanding the  
14                 use of coal may vary from region to region, we (inaudible)  
15                 how to approach these industries.  We anticipate a well-  
16                 attended conference and believe that this effort will  
17                 complement recent steps taken by the Administration,  
18                 Congress, and the National Governors Association.

19                 And I'm going to expect some comments about  
20                 one item that we voted on since our last meeting, and  
21                 that's the MISO Start Up Order.  March 16th the Commission  
22                 issued an order accepting the MISO certification that is  
23                 ready to launch energy markets on April 1, 2005.  We found  
24                 that the RTO had undertaken the necessary steps and  
25                 testing to assure continued grid reliability and

1 continuity of operations on the system.

2 This was an important step in Midwest ISO's  
3 evolution and it paves the way for increased system  
4 reliability and competition in this broad region that  
5 extends from eastern Montana through the upper Midwest,  
6 and south to parts of Kentucky and Missouri. The area,  
7 which also includes the Canadian province of Manitoba,  
8 includes more than 100,000 miles of high voltage  
9 transmission.

10 You may remember, on December 20, 2001, we had  
11 -- we had voted to make it our first FERC approved RTO in  
12 the nation, and now they're at this step.

13 These markets, these energy markets will  
14 operate under the terms and conditions of the Open Access  
15 Transmission and Energy Markets Tariff, which we approved  
16 on August of last year. We required that the  
17 implementation of congestion management on the market-  
18 based family and to allow the energy spot market to bring  
19 their bids to buyers and sellers in a spot market format  
20 as well (inaudible) grid.

21 Implementation of the Day 2 market on April 1  
22 includes a day-ahead energy markets, a real-time energy  
23 market, locational marginal pricings, and financial  
24 transmission rights, which can be filed on its own. So,  
25 that's the event, I believe you and I are going to be



1       there for that.    So I look forward to that as well.

2                   COMMISSIONER BROWNELL:   You know, I think we  
3       owe a great debt of gratitude to our Staff who have  
4       committed the last year of their lives to flying back and  
5       forth, to climb over Wisconsin, Minneapolis to open the  
6       stakeholders, and open to the stakeholders who overcame  
7       some pretty significant doubts to move forward with this  
8       concept.   So it's a great example of how collaboration can  
9       work.   I want to say my thanks, and I know all of us feel  
10      that way.   For Mike McLaughlin and all his (inaudible) and  
11      every steakhouse in Carmel.   Thank you.

12                  CHAIRMAN WOOD:   I agree.   And I want to also  
13      recognize -- we've got Rick and Pat are both out there  
14      permanently located their (inaudible) as you point out,  
15      Nora, in addition to Ben and Mike and some of the other  
16      Staff members.   Some of you people -- a lot of you  
17      probably too, you have been out there a long time today.  
18      It's pretty far apart.   There's some large camps out  
19      there.   And I know you went out there and spent a lot of  
20      time talking to everybody and kind of forced people to  
21      stay in the public interest would not be so rigidly  
22      adhered to their own private interests.   And I think  
23      that's a role that we as Commissioners can play in the  
24      market.   And we will continue to play as they develop and  
25      continue to try to balance that theme for their private

1 interest, accommodating it, but all in the public  
2 interest, too. So, here's to them. Here's to you. Okay.  
3 Madam Secretary.

4 SECRETARY SALAS: Good morning, Mr. Chairman  
5 and good morning, Commissioners. The following items have  
6 been struck from the Agenda since the issuance of the  
7 Sunshine Bill on March 15th. E-5, E-7, E-10, E-44, E-51,  
8 E-56, E-76, E-78, E-82, E-87, E-91, E-92, E-93, E-95, H-7  
9 and C-2.

10 Your Consent Agenda for this morning is as  
11 follows: Electric Items, E-1, 2, 8, 9, 11, 12, 13, 14,  
12 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 31, 33,  
13 34, 35, 36, 40, 42, 43, 45, 46, 47, 50, 52, 53, 54, 58,  
14 59, 60, 61, 62, 63, 64, 65, 68, 70, 71, 72, 73, 74, 77,  
15 79, 80, 81, 84, 85, 86, 88, 89, 90 and 94.

16 Miscellaneous Items, M-1.

17 Gas, G-1, 2, 3, 4, 5, 6, 7, 10 and 14.

18 Hydro Items, H-1, 2, 3, 4, 5, 6 and 8.

19 Certificates, C-1, 3, 4, and 6.

20 As required by law, Commissioner Kelly is  
21 recused from the following items on the Consent Agenda:

22 E-1, E-2, E-27, E-42, E-54, E-63, E-65, E-79,  
23 D-84 and G-7.

24 Specific votes for some of the items on the  
25 Consent Agenda are as follows:

1                   E-24, Commissioner Kelliher consenting in  
2 part, dissenting with a separate statement. E-43,  
3 Commissioner Brownell concurring with a separate  
4 statement. E-59, Commissioner Kelly consenting in part  
5 with a separate. E-60, Commissioner Kelly consenting in  
6 part with a separate statement. E-61, Commissioner Kelly  
7 consenting in part with a separate statement. E-94,  
8 Commissioner Kelliher dissenting with a separate  
9 statement. G-6, Commissioner Kelly dissenting in part with  
10 a separate statement and Commissioner Kelliher votes first  
11 this month.

12                   COMMISSIONER KELLIHER: I'm noting my dissents  
13 on E-24, E-91.

14                   COMMISSIONER KELLY: I'm noting my recusals  
15 and my dissents in E-59, 60, 61 and G-6.

16                   COMMISSIONER BROWNELL: I'm noting my  
17 concurrence in E-43.

18                   CHAIRMAN WOOD: Aye.

19                   SECRETARY SALAS: The first item on the  
20 discussion agenda this morning is A-3. This is a  
21 appliance of qualified facilities with Ownership  
22 Requirements Under the Public Regulatory Quality Act of  
23 1978. It is a presentation by Dan Hedberg, Paul Singh and  
24 Sam Higginbottom.

25                   MR. HEDBERG: Good morning, Mr. Chairman and

1 Commissioners. I'm Dan Hedberg and the table with me are  
2 Paul Singh and S.L. Higginbottom. The purpose of this  
3 report is to provide you with the status of the  
4 Commission's staff's oversight of the qualifying facility  
5 program or "QFs" to ensure compliance with the  
6 Commission's regulations and statutes.

7 The QF Compliance Review initiative has  
8 resulted in substantial progress towards ensuring the QFs  
9 fully comply with the Commission's rules, regulations and  
10 statutes and that information submitted in applications  
11 can be relied upon. This review process has increased the  
12 public's awareness that the Commission is more closely  
13 monitoring compliance with QF ownership requirements and  
14 as a result, the industry appears to be responding with  
15 greater vigilance to ensure compliance with QF ownership  
16 requirements. This may be the main reason for the  
17 significant increase in the number of QF filings made with  
18 the Commission, requests for pre-filing meetings with  
19 staff and informal inquiries to staff on QF matters.

20 The oversight initiative which began in  
21 calendar year 2003 is ongoing today. It consists of  
22 random compliance reviews of approximately 50 QFs each  
23 year to ensure that the facilities claiming eligibility  
24 for QF status do, in fact, meet the requirements of  
25 Sections 3(17) and (18) of the Federal Power Act for QF

1 eligibility, specifically the ownership requirements.

2 The process in conducting these compliance  
3 reviews consists of issuing letters to randomly selected  
4 QFs requiring information to be submitted in the form of  
5 an affidavit signed by an officer of that QF to  
6 demonstrate:

7 (1) the current accuracy of the ownership  
8 information contained in the QF Commission certification  
9 application or self-certification application selected for  
10 compliance review;

11 (2) that the facility meets the QF ownership  
12 requirements of the Commission's regulations and the  
13 enabling statutes; and

14 (3) that any transfers of ownership did, in  
15 fact, occur as described in the application selected for  
16 review.

17 In many instances, staff requested  
18 supplemental information from the QF in order to resolve  
19 questions regarding ownership, affiliation or control over  
20 the QF that was not accurately reflected or fully  
21 supported in applications filed with the Commission.

22 In addition to conducting random surveys, the  
23 Commission has also issued non-random QF compliance  
24 reviews in instances where staff has identified  
25 circumstances requiring further review.

1           For example, staff has recently issued  
2           compliance reviews where unreported changes in upstream  
3           ownership of the QF have come to our attention. In  
4           another example, staff issued compliance review letters  
5           upon discovering inconsistencies between ownership  
6           information presented on internet web pages of the QF's  
7           owner, ownership information presented in Commission QF  
8           filings and information from news services.

9           Paul Singh will present the results of the  
10          compliance reviews.

11          MR. SINGH: In calendar years 2003 and 2004,  
12          staff issued fifty compliance review letters each year to  
13          randomly selected QFs. Staff completed its evaluation of  
14          all fifty of the 2003 compliance reviews and forty-one of  
15          the 2004 compliance reviews. No instances have been  
16          identified to date where the QF ownership was inconsistent  
17          with the applicable statutes and regulations. However,  
18          staff's review identified numerous instances where either  
19          the status of the QF project or the ownership of the QF  
20          has changed from what was last reported to the Commission.  
21          In those cases, Staff has ensured that the QF ownership  
22          status was formally clarified in the public record.

23          At least nine QFs selected for review have  
24          ultimately proposed to withdraw their QF self-  
25          certification during or after the compliance review. In

1 certain instances, staff discovered that the QF project  
2 was either not constructed as planned, or that the  
3 facility no longer operates as a QF.

4 Other changes in ownership were discovered  
5 ranging from the undisclosed sale of the QF to the new  
6 owners, to changes in the upstream ownership due to a  
7 variety of reasons, such as corporate restructuring. As a  
8 result of such changes, several entities have re-filed  
9 their QF status with the Commission concurrent with their  
10 response to the compliance review letter disclosing  
11 details regarding the change in circumstances.

12 To date, in 2005, twenty compliance review  
13 letters have been issued and we expect to issue a total of  
14 fifty by the end of the year.

15 In addition to the compliance review letters,  
16 Staff is exercising greater vigilance in reviewing the QF  
17 self-certifications received by the Commission. During  
18 calendar year 2003, staff received and examined over 270  
19 QF self-certification applications for compliance with the  
20 Commission regulations, including the QF ownership  
21 requirements.

22 In 2004, 414 self-certification or self-  
23 recertification applications were received and examined.  
24 Concerns and discrepancies discovered regarding the self-  
25 certifications have largely been resolved by data

1 requests, or deficiency letters directed to the QF for  
2 clarification or additional information. However, in  
3 three instances, the Commission and the Commission Staff  
4 has issued a ruling that a QF could no longer rely upon  
5 notice of self-certification due to its filing of an  
6 incomplete application and the QF's failure to respond to  
7 staff's requests for additional information.

8 In conclusion, substantial progress had been  
9 made towards ensuring that the QFs fully comply with the  
10 Commission rules, regulations and statutes and that  
11 information submitted in applications can be relied upon.  
12 This review process has increased the public's awareness  
13 that the Commission is more closely monitoring compliance  
14 with QF ownership requirements. This may be the main  
15 reason for the significant increase in the number of QF  
16 filings made with the Commission, requests for pre-filing  
17 meetings with the Staff and informal inquiries to staff on  
18 QF matters as the industry is more vigilant to ensure the  
19 compliance with QF ownership requirements.

20 MR. HEDBERG: I'd like to take this  
21 opportunity to recognize the efforts of Staff members who  
22 have worked on the QF Compliance Review Initiative.

23 From OMTR, the Staff members include: Paul  
24 Singh, John Buckley, Thomas Dautel, Mark Shaw, Esref  
25 Bilgihan, James Eason, Darrel Pierce, Deborah Wyrick and



1 from OGC, S.L. Higginbottom.

2 Thank you very much.

3 CHAIRMAN WOOD: I wanted to thank you all. I  
4 think broad faced (inaudible) I would like you all to know  
5 what we're doing in the way of enforcement of the  
6 different aspects for statute legislation, their lobbying  
7 directorate, and we had some of our OATC audits recently.  
8 This one has its origin actually in a lot of, I would say,  
9 heated inquiries in the 2002 session of Congress when in  
10 the fall Enron there was a lot of news that came out about  
11 the use of that company with making essentially the QF  
12 exception and some of the benefits that accrued that  
13 basically, have been allowed to be accrued. So at that  
14 point, we took on not only the Enron case, but I  
15 committed at the time Mr. Levin, (inaudible) was  
16 interested in this program to be able to undertake the  
17 audit program, to make it probably useful to deliver on  
18 your promise. But more importantly, let the staff  
19 indicate what they're finding as go through and make it  
20 look like an honest man. But also find out things that  
21 can be used to the benefit of the people who are trying to  
22 compile this law that may not be as adept with those as  
23 they need to be. So these compliance reviews should be as  
24 (inaudible) as was reported her just now. And I think,  
25 you know, the affirmative issues, one that is certainly

1       raised of Congress in taking energy legislation about --  
2       we're dealing on a perspective basis that benefit of  
3       developers of qualified power plants, but I think as you  
4       go forward, even though the fact that prospectively  
5       (inaudible) for a while. So, that's good.

6               I appreciate you all spending the time put  
7       forth today.

8               SECRETARY SALAS: The next item today is E-49.  
9       This is Notice of Proposed Rulemaking concerning  
10      Commission authorization to hold Interlocking Directorate.  
11      This is a presentation by Melissa Mitchell who is  
12      accompanied by Jim Akers and Thomas Mey.

13              MS. MITCHELL: Good morning.

14              In response to previously expressed concerns  
15      regarding the timeliness of filing applications for  
16      authorization to hold interlocking positions, this Notice  
17      of Proposed Rulemaking seeks comments on a proposal to  
18      clarify the time at which a person must apply for  
19      authorization to hold interlocking positions under Section  
20      305(b) of the Federal Power Act, and Part 45 of the  
21      Commission's regulations. The NOPR specifically seeks  
22      three things.

23              First, to clarify in Revised Section 45.3 of  
24      the Commission's regulations that persons are prohibited  
25      from holding interlocking positions prior to receiving

1 authorization from the Commission, and to clarify that  
2 "holding" a position shall mean acting as, serving as,  
3 voting as, or otherwise performing or assuming the duties  
4 and responsibilities of the interlocking positions for  
5 which the authorization is requested.

6 Second, the NOPR also seeks to clarify in  
7 Revised Section 45.9 of the Commission's regulations that  
8 information reports for automatic authorization must be  
9 filed with the Commission prior to an officer or director  
10 assuming the duties of the requested interlocking  
11 position.

12 Finally, the Commission seeks comments on the  
13 possibility of no longer granting a waiver of the full  
14 requirements of Part 45 in its orders granting market-  
15 based rate authority.

16 The Commission seeks comments on all the  
17 issues raised in this NOPR sixty days after publication in  
18 the Federal Register.

19 Thank you.

20 CHAIRMAN WOOD: Thank you, Melissa. Any  
21 thoughts, comments or questions?

22 COMMISSIONER KELLIHER: Thank you, Mr.  
23 Chairman. I wanted to first of all commend you, Mr.  
24 Chairman for moving the proposed rule. I'm impressed that  
25 you followed through on another comment.

1                   CHAIRMAN WOOD:  It's pretty --

2                   COMMISSIONER KELLIHER:  I just wanted to  
3       commend the staff for moving so quickly in developing this  
4       proposal.  As the proposal indicates, the legislative  
5       history of Section 305(b) indicates that Congress  
6       "Exhibited a relentless interest in, bordering on  
7       obsession with interlocking directorates."  And some may  
8       believe that my interest, although --

9                   (Laughing)

10                  COMMISSIONER KELLIHER:  -- but, I think we --  
11       I wouldn't say it's an obsession, but I think we have a  
12       duty to faithfully execute the law even the more obscure  
13       position of the Federal Power Act.  That's what I think  
14       we're doing.  In effect, there's been a procession in many  
15       orders, as Section 305(b) being a dead letter.  And that's  
16       -- to give background on the orders from the past year,  
17       that that was the perception by many.  And that it wasn't  
18       something the Commission would do something -- the  
19       provisions where compliance was discretionary and they had  
20       infrequency.  And we have (inaudible) it's not  
21       discretionary.

22                  Under Section 305(b), individuals are  
23       prohibited from holding interlocking positions unless the  
24       holding of such positions has been authorized by a  
25       Commission.  It's very clear in the statute.  And the

1       proposal modifies existing rules to make them more  
2       consistent with the statute, in my view.

3               Under the NOPR it's clarified -- it's  
4       clarified that a prior approval is required before  
5       individuals can hold one of these positions. And holding,  
6       the term holding is defined as well in the proposed rule.  
7       It can mean "acting as," "serving as," voting as or  
8       otherwise performing or assuming that these  
9       responsibilities of the interlocking positions for which  
10      an obligation is required." Those clarifications are  
11      important because we very recently denied authorization  
12      for an interlocking position where the individual has  
13      actively participated in voting and deliberating, well  
14      before the filing and the authorization of the Commission.  
15      They clearly were holding the position at least two months  
16      before they actually filed for the Commission's  
17      authorization.

18             As a proposal these filings will be denied.  
19      The Commission also makes exchanges related to automatic  
20      authorizations for interlocking positions within the same  
21      program family. Instead of requiring filing thirty days  
22      after a disclosed position, NOPR requires prior approval.  
23      And also further provides that state filing will not be  
24      entitled to automatic authorization. I support all these  
25      changes. I support that it be totally rule. (Inaudible)

1       that I won't have to pump in interlocking directorates.

2                       (Laughing.)

3                       COMMISSIONER KELLIHER: My hope is we will  
4       actually see consistent compliance with this. And I'm  
5       very glad that it is being added to the audits that -- the  
6       Commission questions at the interlocking positions through  
7       the audit. So, hopefully we'll see a record of compliance  
8       and I won't have to talk to the (inaudible). But I  
9       support your efforts. I think I will end my comments with  
10      that.

11                      COMMISSIONER KELLY: Well, I wanted to thank  
12      you, Joe, for your leadership on this issue. and I think  
13      that not only is it perhaps has been an obscure provision  
14      of the statute, but it's an important one. And holding a  
15      position as a member of the Board of Directors of a public  
16      utility, it's not only one of private trust, but of public  
17      trust. And an interlocking directorate, I think, presents  
18      an ethical issue. So, I think substantively it's very  
19      important that this rise on our agenda of things that are  
20      important to us. And I think that your discussions of  
21      business are quite appropriate.

22                      Thank you. And thank you, Scott, for working  
23      on this for us.

24                      CHAIRMAN WOOD: I got a question, actually, as  
25      recently as yesterday about several of these issues that

1 have come into play for publicly. And, Cindy, just for  
2 the record that's being made, applicants or a company has  
3 a question about whether this applies to them or not, whom  
4 should they contact?

5 MS. MARLETTE: They can contact me for  
6 informal advice. If they'd like a level of higher  
7 formality, they can ask for a formal GP opinion letter; or  
8 if they want the super formal, they can ask you for a  
9 declaratory order and certification.

10 CHAIRMAN WOOD: Right, which we've done.

11 MS. MARLETTE: Declaratory orders are  
12 expensive. There's a fee for that.

13 MS. GRANSEE: There's also a fee for the  
14 general counsel.

15 CHAIRMAN WOOD: All right, let's vote. Joe,  
16 you're first.

17 COMMISSIONER KELLIHER: Aye.

18 COMMISSIONER BROWNELL: Aye.

19 COMMISSIONER KELLY: Aye.

20 CHAIRMAN WOOD: Aye.

21 SECRETARY SALAS: And the final item of  
22 discussion this morning is E-3. It's the Entergy  
23 Certification. It's a presentation by Sanjeev Jagtiani and  
24 Christy Walsh.

25 MR. JAGTIANA: Good morning, Mr. Chairman and

1 Commissioners.

2 With me today is Christy Walsh.

3 E-3 is a petition for declaratory order  
4 concerning Entergy's proposal to establish an Independent  
5 Coordinator of Transmission or ICT. Initially, the ICT's  
6 responsibilities included oversight over Entergy's  
7 granting or denying of transmission service under  
8 Entergy's OATT, oversight of Entergy's administration of  
9 requests to interconnect new generating facilities and  
10 oversight of Entergy's Weekly Procurement Process.

11 Subsequent to that filing, technical  
12 conferences were held in New Orleans, Louisiana; Jackson,  
13 Mississippi; and Little Rock, Arkansas in the second half  
14 of 2004. As a result of the discussions at the  
15 conferences among market participants, retail regulators  
16 and the Commission's representatives at those conferences,  
17 Entergy states that it is willing to enhance its prior ICT  
18 proposal to increase the functionality of the ICT to  
19 include:

20 (1) granting or denying requests for  
21 transmission service;

22 (2) operating Entergy's OASIS;

23 (3) calculating Available Flowgate Capacity  
24 or AFCs and;

25 (4) performing an enhancement planning



1 function.

2           Entergy asserts that the ICT should not be  
3 deemed a public utility by virtue of it performing the  
4 added functions. In addition, Entergy insists that its  
5 proposed transmission pricing is acceptable and consistent  
6 with the Commission's transmission pricing policies.

7           The Order notes that Entergy has identified  
8 only one entity, Southwest Power Pool or SPP, as the  
9 potential ICT. Based on this representation, the order  
10 presumes that SPP will be selected as the IPP. Because  
11 SPP is the regulated -- jurisdictional Commission-approved  
12 RTO, which has been found to be independent, the Order  
13 does not need to address whether the SPP's performance of  
14 these additional functions on behalf of Entergy provides  
15 an independent basis for deeming SPP to be a public  
16 utility. The order, however, does address the concerns  
17 that the ICT proposal would diminish the jurisdiction of  
18 Entergy retail regulators. The order finds that although  
19 Entergy is transferring certain functions to the ICT,  
20 Entergy will continue to be the transmission provider  
21 under its OATT. Therefore, the order finds that the  
22 presence of SPP as the ICT will not change the existing  
23 balance of jurisdiction between this Commission and  
24 Entergy's retail regulators.

25           Turning to Entergy's transmission pricing,

1       Entergy's pricing divides upgrades into two categories:  
2       Base Plan and Supplemental upgrades. Base Plan upgrades  
3       would continue to be rolled-in and recovered through base  
4       rates as is the case now. Supplemental Upgrades would be  
5       directly assigned to the interconnection customer. In  
6       return, customers would receive a firm PTP allowance equal  
7       to the cost of the funded supplemental upgrades.

8               Finally, Entergy also proposes to have the ICT  
9       review previously contracted for interconnection costs and  
10      have the ICT determine whether the costs should be rolled-  
11      in or directly assigned.

12             With respect to Entergy's pricing proposal,  
13      the order finds that the proposed pricing appears to be  
14      just and reasonable, and approves it on a two-year  
15      experimental basis. However, the draft order requires  
16      certain limited modifications.

17             The order modifies Entergy's pricing proposal  
18      to require the ICT, and not Entergy to establish the  
19      initial Base Plan. The order also directs Entergy to  
20      propose and more fully support a method for providing firm  
21      transmission rights to the interconnection customers that  
22      pay for those supplemental upgrades. The order encourages  
23      Entergy and SPP to apply to remove rate pancaking for  
24      transmission between the two systems.

25             In addition, the order does not approve, at

1       this time, Entergy's proposals to have the ICT review  
2       previously contracted for interconnection costs. The  
3       order directs Entergy to explain further how the ICT can  
4       review these costs independently and fairly without using  
5       Entergy's supplied inputs.

6               When Entergy agrees to submit a Section 205  
7       filing that incorporates these directives, the order  
8       grants Entergy's pricing proposal for a two-year  
9       experimental basis that would terminate on its own at the  
10      end of that two-year period. The order informs Entergy  
11      that it could seek a continuance of its proposed  
12      transmission pricing sixty days prior to that expiration.

13             I'll now turn it over to Christy Walsh who  
14      will discuss a companion order being issued today  
15      regarding Entergy's AFC ongoing hearing and the timeline  
16      for implementation of the ICT proposal.

17             Thank you.

18             MS. WALSH: Good morning, Mr. Chairman and  
19      Commissioners.

20             On December 27, 2004, the Commission  
21      instituted various procedures under Section 206 of the  
22      Federal Power Act to investigate the implementation of  
23      Entergy AFC program. In light of the Commission's order  
24      being issued contemporaneously involving Entergy's ICT  
25      proposal, the Commission is willing to provide that the

1 AFC hearing be held in abeyance pending Entergy's response  
2 to the accompanying ICT Order.

3 As Sanjeev stated, one facet of Entergy's ICT  
4 proposal is to calculate AFC. Because the implementation  
5 of Entergy's ICT proposal may resolve matters at issue in  
6 the AFC hearing, the order states that the Commission is  
7 willing to hold that hearing in abeyance beginning on the  
8 date that Entergy notifies the Commission of its intent to  
9 file its Section 205 filing in accordance with the  
10 directives of the ICT Order, including the modifications  
11 required therein.

12 In order for the hearing to be held in  
13 abeyance, Entergy must notify the Commission of its intent  
14 to file its Section 205 filing within thirty days of the  
15 date of this order. In addition, we will hold the AFC  
16 hearing in abeyance for an additional sixty days after a  
17 Commission order approving the Section 205 filing in order  
18 for Entergy to file to install an independent entity with  
19 ICT functions.

20 We expect that the ICT will be installed  
21 within sixty days of the date of the order approving the  
22 Section 205 filing unless the ICT requests a delay. If  
23 the Commission approves the filing installing the ICT,  
24 then we will continue to hold the AFC hearing in abeyance  
25 and will cancel the hearing when ICT begins to perform its

1 functions.

2 Thank you.

3 CHAIRMAN WOOD: All right. This was a  
4 significant order and I appreciate the efforts that went  
5 into. I think all of us spent a lot of time on it and all  
6 of our staff personal staff, as well as the Agency staff  
7 on it. And I know that we agree with a lot of the  
8 thoughts and discretions over the last year or so,  
9 (inaudible.)

10 COMMISSIONER KELLIHER: I have one question.  
11 Christy or Sanjeev, I'm not sure who is more familiar with  
12 this. But can someone describe what the ICT role will be  
13 when we go through the final process?

14 MR. JAGTIANI: Entergy plucked it from the  
15 (inaudible) fire. Entergy modified that portion of it I  
16 their petition for declaratory order. In that filing the  
17 ICT had a general oversight role during the process.

18 COMMISSIONER KELLIHER: Is that something that  
19 will be addressed in the 205 filing?

20 MR. JAGTIANI: Yes.

21 CHAIRMAN WOOD: I would think in line with the  
22 questions, Joe, I'm sort of interested, while (inaudible),  
23 saying that was a real important part of the whole  
24 process. (Inaudible) understanding the history fully, a  
25 lot of the reports that you heard about (inaudible),

1 customers, dollar issues, that's an appropriate part of  
2 it.

3 COMMISSIONER KELLY: Mr. Chairman, I believe  
4 that this is in a new docket, because I was recused from  
5 the earlier proceeding and so I believe I can go on this  
6 one. I think that what we have here is an improvement on  
7 the status quo or transmission operation of Entergy. And  
8 I'm pleased with the movement and the progress. And I  
9 think that it will be beneficial to Entergy and its  
10 consulate and other stakeholders in the issue.

11 COMMISSIONER BROWNELL: I think it's a good  
12 beginning step. I appreciate the work that the Staff did.  
13 I think in identifying some of the additional  
14 responsibilities that the ICT will have to perform to meet  
15 the task. I think the real work is yet to be done in  
16 terms of what we see in that 205 filing. I think there  
17 are going to be significant benchmarks that have to be  
18 met. We had three years plus experience with promises  
19 made and promises broken from this company, in terms of  
20 delivering value to customers. So I am writing separately  
21 to raise some of the issues that the interveners have  
22 raised to be certain that those are addressed in the next  
23 step.

24 And the interveners, I think, in some cases at  
25 great risk to themselves, raise certain issues. I don't

1 think I'll ever forget that meeting in New Orleans in  
2 terms of the number of customers from small cities to  
3 large employers, to munies, to co-ops talking about the  
4 experiences they've had. So, I think, that this is better  
5 than where we are. I'm hoping in the 205 filing we see  
6 that it is a whole lot better than where we are. And more  
7 importantly, that the company take seriously its  
8 responsibility to customers in delivering on the  
9 commitments that it makes both here and in that 205  
10 filing.

11 So, I think, good work. We still have a lot  
12 of work to go. And I think the proof will be in the 205  
13 filing and the benchmarks, I think, that are set for  
14 delivering on the commitments made.

15 So thank you guys for tolerating a lot of  
16 discussion.

17 CHAIRMAN WOOD: Amen. I will introduce that I  
18 have been a retail and wholesale regulators for a decade  
19 now and I think it's important to walk it, if they talk  
20 it. And I do know that there the PCT was the only one  
21 stating that it might not foresee a more independent  
22 regional independent regional transmission (inaudible.)  
23 And I'm glad they are finally with it for the obvious  
24 reasons. But I do think that the Commission Board here  
25 that they were trying to reach the proposal that finally

1 developed than they (inaudible). It's an evolutionary  
2 issue here, and one that I think over time I hope we  
3 expect to see throughout the (inaudible). I hope they see  
4 this as a synergistic opportunity and not as a tug of war  
5 between the (inaudible), as where else that we have had  
6 more independent operation of the transmission grid and  
7 whatever models we have seen customer benefits flow from  
8 that. And I affirmatively believe so. I think that we  
9 will continue to see that. I think that it was a  
10 balancing act that the Commission, (inaudible). They have  
11 fee hearings, as well as the experimental nature of this  
12 proposal is appropriately guarded, because of the  
13 important obligation to fulfill, as you pointed out  
14 before.

15 I'd like to personally thank Michelle. Also,  
16 I have will say to the parties that have backed it up.  
17 Also hold faith to the parties who have (inaudible). I  
18 give you personal credit, because you went out on a limb  
19 and we're very appreciative of that. So, I'm ready to go  
20 forward, and you all are too.

21 COMMISSIONER KELLIHER: I'd just like to make  
22 some comments on this order. The order does provide  
23 guidance that will help shape future filings by Entergy,  
24 205 filings to establish and interconnect transmission  
25 process or assign cost responsibility for transmission



1 upgrades. And the filing does exceed the requirements.

2 And (inaudible) oversight, access to  
3 transmission, order to grant and deny transmission  
4 service, and assignment of costs for the transmission  
5 upgrades. There are some significant parts in the  
6 proposal, include transparency of the transmission  
7 information, enhance transmission access, reduce  
8 (inaudible) transmission congestion, produce dependable  
9 information and hopefully improve market access by  
10 independent generators into the transmission system.

11 The Commission has also provided guidance as  
12 to transmission pricing proposal, it's in the Transmission  
13 Pricing Policy Statement. But it is important to  
14 recognize that without the ICT the Commission probably  
15 would have reached a different conclusion on the pricing  
16 proposal. And that Commission also indicates that the  
17 pricing proposal as modified could be approved on an  
18 experimental basis. I think it's useful to point out at  
19 this time that this is not the first time the Commission  
20 has approved some kind of pricing proposal on an  
21 experimental basis. It did so in the West 20 years ago  
22 when the Commission authorized market-based pricing.  
23 Initially it so experiment in less. And 20 years ago, it  
24 so, and it did prove successful. And that being the basis  
25 for our current market-based rate program.

1                   So, if this pricing proposal proves successful  
2                   it may also be the same. We may make our final decision  
3                   when see a Section 205 filing. But at least work is work.  
4                   Thank you.

5                   CHAIRMAN WOOD: Thank you, Joe.

6                   COMMISSIONER KELLY: Thank you, Joe. And I  
7                   wanted to add something on the state regulation issue. I  
8                   know that the state commissions are regularly concerned  
9                   about the balance of transmission between the Commission  
10                  and themselves. I just wanted to emphasize that based on  
11                  the information that we have to date, is this proposal  
12                  should not have any impact on the current jurisdictional  
13                  balance.

14                  And Joe mentioned the increased transparency  
15                  that is going to come from this. And this increased  
16                  transparency actually increases the influence of state  
17                  commissions, as I had observed in those areas where there  
18                  are RTOs and ISOs, and regional state committees. I've  
19                  talked to those regulators, that they feel that they have  
20                  more information, and actually more input, particularly,  
21                  on transmission planning and pricing than they do in areas  
22                  where it is just within the control of the (inaudible).  
23                  So, I think there is an improvement in that area as well.

24                  CHAIRMAN WOOD: Good. Thank you all for the  
25                  late night, too. Ready to submit?

1 COMMISSIONER KELLIHER: Aye.

2 COMMISSIONER BROWNELL: Aye.

3 COMMISSIONER KELLY: Aye.

4 CHAIRMAN WOOD: Aye. The meeting is  
5 adjourned.

6 (Whereupon, at 11:00 a.m., the open session was  
7 concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Pamela S. Jenkins, do hereby certify that I took the audiographic notes of the foregoing proceedings and the same were reduced to transcript under my direction; that the foregoing is a true record of said proceedings; that I am neither related to nor employed by any of the parties to the action herein; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor am I financially or otherwise interested in the action.

---

PAMELA S. JENKINS

COURT REPORTER